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09/396,128	09/14/1999	THOMAS THOMPSON		7005

7590

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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 06/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/396,128

Applicant(s)

THOMPSON, THOMAS

cd

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This is a Non-Final Office Action from the examiner in charge of this application in response to applicant's request for a CPA dated 3/4/02.
2. Please note that claims 1-19 were pending. In the request for CPA, applicant requested to cancel claims 1-11, and add claims 12-31. It appears that applicant's intent is to cancel claims 1-19 and then add new claims 12-31. Therefore, for the purpose of this examination, new claims 12-31 have been renumbered under Rule 126 as: 20-39, respectively. Clarification is required.

#### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 12-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12, (1) the limitation "the bulk of the lower part" fails to clearly define the metes and bounds, thus renders the claim indefinite, (2) the limitation "said top bend forming sheathing tabs" is indefinite for failing to clearly define how it is possible that 1 bend able to form more than one tab. Claim 15, the limitation "most of the side edges of the top plates of the wall" is indefinite for failing to clearly define the metes and bounds of the claimed invention, it is not clear what the applicant is referring to. Claim 16, "both plates of said top plate of the wall" lacks antecedent basis. Claim 17, "said extended lower part of the long ends" lacks antecedent basis. Claims 18, 19, and 21, it is not clear how applicant defines the "axis" of the bend. Claim 21, it is not clear how it is possible for the axis of the plate tabs ate generally parallel to the rectangular face. Claim 24, "said top plate" lacks antecedent basis. Claim 25,

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“said adjacent rafter, said top plate, and said roof sheathing” lacks antecedent basis. Claim 26, “said rectangular faces having the lower long side” should be “said rectangular faces each having the lower long side”. Claim 27, “near mirror image” is vague, thus indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 12-25 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,370,577 to Jonett et al.

Jonett et al discloses an apparatus for securing structural members of a building, Figs 2-3, comprising all the elements recited in the above listed claims and including a unitary body having a rectangular face with ventilation holes, a plurality of right angled bends forming sheathing tabs 26, rafter tabs 32', plate tabs 46', wall tabs 72, and a lower long side 72 extended down, wherein each tab has a plurality of nail holes therein, the axis of said bend forming the sheathing tabs being generally parallel to the long dimension of the rectangular face, the axis of said bends forming said rafter tabs being generally parallel to the short dimension of the rectangular face, and the axis of said bends forming said plate tabs being generally parallel to the rectangular face.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonett et al.

Jonett et al discloses an apparatus for securing structural members of a building, Figs 2-3, comprising all the elements recited in the above listed claims and including a unitary body having a rectangular face with ventilation holes, a plurality of right angled bends forming sheathing tabs 26, rafter tabs 32', plate tabs 46', wall tabs 72, and a lower long side 72 extended down, wherein each tab has a plurality of nail holes therein, the axis of said bend forming the sheathing tabs being generally parallel to the long dimension of the rectangular face, the axis of said bends forming said rafter tabs being generally parallel to the short dimension of the rectangular face, and the axis of said bends forming said plate tabs being generally parallel to the rectangular face. The only different being that Jonett does not disclose the apparatus being formed of two flat plates, with one of the plates having horizontal tracks with openings on one end and the other plate having runners with faces and arms.

It would have been obvious and well within the level of one skill in the art to modify the apparatus of Jonett et al by having the apparatus being formed of two flat plates, with one of the

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plates having horizontal tracks with openings on one end and the other plate having runners with faces and arms for the purpose of making the apparatus adjustable to different sizes.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the apparatus of Jonett et al being formed of two flat plates, with one of the plates having horizontal tracks with openings on one end and the other plate having runners with faces and arms for the purpose of making the apparatus adjustable to different sizes, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hubscher shows structures similar to various elements of applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

HVT *HVT*  
June 17, 2002

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

